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International Convention for the Protection of All Persons from Enforced Disappearance

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UNIVERSITY OF ILLINOIS
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Committee on Enforced Disappearances

Concluding observations on the report submitted by Belgium under article 29, paragraph 1, of the Convention

Addendum

Information received from Belgium on follow-up to the concluding observations*

[Date received: 8 January 2016]

I. Introduction

1. Following the consideration of the report submitted by Belgium under article 29, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance at its 100th and 101st meetings, held on 15 and 16 September 2014, the Committee on Enforced Disappearances adopted its concluding observations (CED/C/BEL/CO/1) at its 113th meeting, held on 24 September 2014.

2. In accordance with its rules of procedure, the Committee requested the Government of Belgium to provide, within one year, information on the implementation of the recommendations set out in paragraphs 8, 12 and 30 of the concluding observations.

3. The Government of Belgium thanks the Committee for the valuable discussions that took place during the consideration of its report and has the honour to submit the following information.

II. Preliminary remarks on the dissemination of the concluding observations and consultation with civil society

4. The Committee's observations were sent to the relevant federal and federated authorities. Additional remarks were provided on the basis of the constructive dialogue with the Committee that took place on 15 and 16 September 2014. The attention of all relevant actors was drawn to the steps needed to ensure prompt and appropriate follow-up to the concluding observations. The observations, which were also translated into Dutch, were sent to representatives of civil society.

* The present document has been issued without formal editing.

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5. At the same time, a coordination exercise was begun in January 2015, on the initiative of the Federal Public Service for Foreign Affairs, with a view to designing a tool to gather and catalogue all the observations made to Belgium by the human rights treaty bodies. Representatives of civil society are also involved in this exercise. The goal is to have a working tool to facilitate meaningful follow-up on the recommendations. The observations relating to the Convention were of course also included in this exercise.

III. Information on the follow-up to the Committee's main recommendations

A. Recommendation contained in paragraph 8: ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

6. In view of the vulnerable situation of persons deprived of their liberty, the State party reiterates its intention to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it signed on 24 October 2005. The German-speaking Community has already agreed to the ratification of the Optional Protocol by a decree of 25 May 2009; the Flemish Government adopted a similar decree on 16 March 2012.

7. The important question of the ratification of the Optional Protocol remains under consideration, as it raises complex issues related to the vast scope of application of the Optional Protocol and the number of federal and federated entities potentially affected.

8. The issue is currently being discussed in the context of the creation of a Belgian independent human rights mechanism, in line with the Paris Principles, that is expected to be operational by the end of the legislative session. This mechanism could play an important role in respect of the Optional Protocol by coordinating the various institutions that already fulfil, in part, the mandate of a national mechanism for the prevention of torture, such as the Standing Committee for Police Oversight for police stations or the Federal Migration Centre for detention centres for undocumented migrants; it could also monitor, through regular and preventive visits, places that are not as yet assigned to any specific institution, for instance, homes for older adults.

9. It is important to stress that the association of the ratification of the Optional Protocol with the establishment of an independent human rights institution does not preclude quicker progress on certain aspects of the Optional Protocol. Thus, the operational capacity of the Central Advisory Board for Prison Surveillance and its local commissions, as well as their independent role, are soon to be strengthened by having the Central Advisory Board report to the Parliament in order to provide for totally independent prison surveillance in the future.

B. Recommendation contained in paragraph 12: definition of enforced disappearances that do not constitute crimes against humanity as a specific offence

10. During the previous legislative period, a draft law was prepared with a view to establishing enforced disappearances that did not constitute a crime against humanity as a separate offence, as required under articles 2 and 4 of the Convention.

11. While enforced disappearance that does not constitute a crime against humanity is not yet treated as a separate offence, such an act would in any case be illegal as it violates fundamental rights enshrined not only in international provisions directly

applicable in Belgian law (in particular, the right to liberty and security enshrined in article 9 of the International Covenant on Civil and Political Rights, article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 6 of the Charter of Fundamental Rights of the European Union) but also in existing national constitutional and criminal provisions. Reference is made in this connection to article 12 of the Constitution of Belgium. Enforced disappearance, as defined in article 2 of the Convention, may be prosecuted on the basis of existing national criminal law. Articles 147, 155, 156 and 157 of the Belgian Criminal Code set out as separate offences, respectively, unlawful and arbitrary detention by public officials, the maintenance by public officials of unlawful and arbitrary detention, the failure of public officials to report such a detention and certain activities on the part of certain public officials that may lead to the concealment of a detained person — such as a refusal to show registers — or to the illegal detention of that person. When it is committed by a private person, an act of enforced disappearance may be punished under articles 434 to 438 bis of the Belgian Criminal Code, which criminalizes infringements of personal liberty. Furthermore, an act of enforced disappearance may be punished, regardless of the perpetrator, on the basis of the provisions criminalizing torture (art. 417 ter), inhuman treatment (art. 417 quater) and, where appropriate, the abduction and concealment of minors or other vulnerable persons (arts. 428 to 430).

12. The Belgian authorities at the time submitted the draft law to the Belgian College of Prosecutors General for its consideration. The College rendered its opinion on 15 December 2015.

13. The draft law will be reviewed in the light of those inputs. It will also be considered in the context of a broader reform process. The Minister of Justice has begun a process to reform Book II of the Belgian Criminal Code in order to bring offences up to date and to ensure a more meaningful scale of penalties. The Committee's recommendation will be duly taken into account for the reform.

14. Belgium wishes to assure the Committee of its commitment to the comprehensive application of the Convention, as demonstrated by the general policy note of the Minister of Justice, submitted to the House of Representatives of Parliament on 10 November 2015:

> In terms of criminal policy, we will continue to combat racism, anti-Semitism, Islamophobia and discrimination. The work of the review committee concerning the anti-discrimination legislation will help us to further improve standards. In accordance with European Union Framework Decision 2008/913/JHA, denial is also punishable as a criminal offence on a wider scale. Furthermore, the incorporation into domestic law of the International Convention for the Protection of All Persons from Enforced Disappearance, which has been ratified, must be finalized.[1]

C. Recommendation contained in paragraph 30: origins of adopted persons

15. In Belgium, adoption matters are the remit of both the federal and the community authorities. The Communities are responsible for the preparations for adoption, the matching of children with adoptive families and post-adoption follow-up, including origin searches. The Federal Central Authority is competent for issues relating to recognition and registration of adoptions abroad.

[1] Parliamentary document, House of Representatives, 2015-2016, No. 54-1428/008, p. 58, available at http://cdn.nimbu.io/s/1jn2gqe/channelentries/adunyme/files/beleidsnota15.pdf?5xuy725).

16. In addition, each type of adoption (international, domestic, extra- or intra-family etc.) follows a separate procedure requiring the involvement of different authorities:

- The Federal Central Authority, as previously mentioned, recognizes and registers adoptions processed abroad;
- The Community Central Authorities and accredited adoption agencies handle international and domestic adoptions of minors;
- The judicial authorities also sometimes play a part in the adoption process, for instance, in adoptive family assessments; the approval of Belgian domestic adoptions; the approval of international adoptions where pre-adoption probationary placement is required; and the conversion of simple adoptions to full adoptions;
- The community administrative authorities are responsible for entering the information in the civil registry;
- Belgian diplomatic missions abroad and the Federal Public Service for Foreign Affairs handle the legalization of documents and the issuance of visas and conduct inquiries in the country of origin.

17. The information sought by adopted persons in researching their origins may therefore be held by various entities. Each competent authority has its own records on the adopted person, and the information contained therein may overlap or differ to some extent.

18. Since each of the aforementioned authorities is responsible for handling access to the information in its possession, the royal decree initially sought to harmonize practices in order to improve consistency, especially between the federal and community authorities.

19. However, since, in practice, the Community Central Authorities already handle origin searches as part of the post-adoption follow-up process, they have already resolved the issue insofar as their competence is concerned, that is, access to records. There are three decrees that currently apply, namely:

- The Flemish Council decree on the international adoption of children of 20 January 2012;
- The German-speaking Community decree on adoption of 21 December 2005;
- The French Community decree on adoption of 31 March 2004, as amended by the decree of 5 December 2013.

20. In reality, access to a person's records and origin searches is already overseen and managed by each of the competent authorities.

1. Federal practice

21. Since the Federal Central Authority was established only on 1 September 2005, it has received a relatively small number of requests relating to searches for the origins of adopted persons — a maximum of 10 requests per year. Generally, the Federal Central Authority contacts the competent Community, which may in turn contact the accredited adoption agencies. The Federal Central Authority then forwards the information received to the adopted person and/or refers him or her to the Community concerned. If no relevant information is available in Belgium or via Belgian diplomatic missions abroad, the Federal Central Authority contacts the central authority of the adopted person's country of origin.

2. Flemish Community practice

(a) Consultation of adoption records

22. Since the entry into force of the Flemish government order of 22 March 2013 on mediation and the right to consultation in international adoption cases, internationally adopted individuals may, in practice, avail themselves of their right to consult their adoption records. One of the duties of a Flemish civil servant who deals with adoptions is to give such individuals access to their files. Therefore, any person in possession of the adoption file of a third party must provide a copy to the adoption civil servant assigned to the case for safekeeping and for future consultation, if requested.

23. Agreements are signed with the owners of the files with regard to the preservation of the originals. In addition to electronic copies, the originals are kept in case an adopted person wishes to consult an original photograph or document. The staff of Vlaams Centrum voor Adoptie (VCA) have received additional resources for this project. By the end of 2014, nearly 1,200 archived files from the adoption agencies Interadoptie and Hogar Para Todos had been prepared for digitization; digitization began in 2015. Nearly 3,000 archived files from the adoption agency De Vreugdezaaiers will also be digitized, as will the archives of adoption agencies still in operation in Belgium. The electronic copies of the archived adoption files of Centrum voor Seksuele Voorlichting and of the Royal Museum for Central Africa, received by VCA in 2014, will be incorporated into the digitized archives. The goal is for all the archives to have been transferred to the digital library by the end of 2015.

24. When adopted persons request access to their records, VCA checks whether such records are in its possession. This is not always the case. Sometimes the file is there, but the few documents it contains provide no answers to the questions of the person concerned. VCA spares no effort in continuing to assist the adopted person. It contacts other institutions, both in Belgium (e.g., youth courts, the national archives, the French Community) and abroad (e.g., orphanages, government authorities). The right to consult one's records is emphasized in all contact with foreign authorities. An agreement signed with the authorities of Viet Nam in 2013 thus helped an adopted person find his biological family in 2014.

25. In 2014, 24 internationally adopted persons contacted VCA in order to consult their adoption records. Of these, 17 were given access to their records. One of them had already submitted a request to consult his records in 2009, but had not followed up on it; he then submitted a new request in 2014. Two adopted persons were referred to the adoption agency that was in charge of mediation services at the time. If they wish, they may contact VCA again. Five adopted persons' requests were not able to be processed. No records were available for two of them. At the suggestion of VCA, the country of origin was contacted for one of these two; the other adopted person did not make any further request. One adopted person who was living abroad had sufficient information to find his biological family and no longer needed to consult his adoption file. The file of one of the adopted persons was being held by the French Community, which had not yet sent it to VCA. The fifth unprocessed request was submitted by a third party and not by the adopted person, who is the only person authorized to consult the file. In 2014, two adopted persons who had submitted their requests in 2013 were authorized to consult their records. The adopted persons were from the following countries: India (12), Viet Nam (3), Russia (2), Rwanda (2), Bolivia (1), Colombia (1), Ecuador (1), Guatemala (1), Haiti (1), Romania (1) and Thailand (1). Two of the requests were submitted by minors. With regard to domestic adoptions, the regulations on the safekeeping and consultation of files are contained in the Flemish government order of 19 April 2002 on the adoption agencies in charge of mediation for domestic

adoptions. Articles 27 and 28 provide that the files are processed and kept by the adoption agencies and are accessible only through the coordinator. Individuals may be granted access to their files, in accordance with the law on the protection of privacy. Even though VCA is not involved in any step of the domestic adoption process, it nevertheless receives requests from domestically adopted persons. Needless to say, VCA also takes action in such cases to provide adopted persons with as much information as possible. In 2014, meetings were held with the archivists of public social welfare centres to determine whether the archivists had adoption files in their possession that might be made available to VCA. The domestic adoption agency Gewenst Kind inherited the adoption files of former agency Sociaal Centrum Visserij and has begun digitizing them; VCA receives a copy of these digitized files. Eight domestically adopted persons requested access to their adoption records. VCA was able to grant access in only three cases, two of which were through referral to the adoption agency. Two adopted persons did not follow up on their request, once approved, to consult their files. It was not possible to help the remaining three adopted persons, as there was no trace of their files. Two of these individuals were looking for their biological families and were referred to the Zoekregister project. All the requests were submitted by adults. One adopted person asked to consult his adoption file, but it contained such sparse information that it was not clear whether the child in question had been adopted domestically or internationally. The adopted person stopped answering the follow-up questions sent by VCA.

26. In 2013, VCA approved the requests of 14 internationally adopted persons to consult their files. Of those, one was a second consultation and another was a consultation based on a request made in 2012. Six individuals were not able to access their files: no files were found for three of them; a further two withdrew their requests; and the remaining request was not submitted by the adopted person, who alone is authorized to consult the file. VCA thus received eight more requests than in 2012. Seven domestically adopted persons also requested access to their files. VCA was able to grant access in only three cases, two of which were through referral to the adoption agency. It was not possible to help two individuals, as there was no trace of their files. One individual withdrew his request and another was referred to a youth court. One 2012 request was rerouted in 2013 to a youth court. Most of the individuals who submitted a consultation request in 2013 were born between 1971 and 1990.

27. For any follow-up action after consultation of their files, adopted persons are referred to the Steunpunt Adoptie adoption support centre or to the Zoekregister project.

(b) Origin searches

28. A consultation request submitted by an adopted person is often linked to a broader search for information about their roots or origins and sometimes to a search for their biological family. In order to process such requests, VCA met several times in 2014 with representatives of Steunpunt Adoptie and Zoekregister on the subject of origins. The topic was further discussed within the VCA advisory committee.

29. In 2014, VCA was granted access to the national registry, which helps it to better assist adopted persons (primarily those adopted domestically) in searching for their biological families.

30. In 2014, VCA was involved in 31 requests for such searches which were submitted by persons adopted domestically and internationally alike. A total of 17 requests were submitted directly by the individual concerned, 7 by the Zoekregister project, 4 by Steunpunt Adoptie and 3 by an adoption agency. A total of 11 requests were submitted by individuals adopted internationally and 6 by individuals residing abroad. The latter requests were submitted by five families living in Ethiopia, Haiti,

India and Rwanda who were searching for their adopted relatives in Belgium. In one case, the adopted person was living abroad, but he was thought to have been born in Belgium. A total of 14 requests related to domestic adoptions: 11 of these were submitted by adopted persons searching for their biological families; 2 were submitted by a biological mother; and 1 was submitted by a family member searching for adopted brothers and sisters.

31. In 2013, VCA was contacted 14 times for the purpose of helping adopted persons find their biological families. Eight adopted persons (four international and four domestic adoptions) were searching for their biological families and two Belgian biological parents were looking for their children. Four requests were submitted by biological families living abroad (China, Haiti, Rwanda and Viet Nam) who were looking for their adopted children in Belgium. Where possible, VCA helps such families find their relatives by contacting the individuals concerned or by referring them to the relevant agency.

3. French Community practice

(a) Consultation of adoption records

32. The Adoption Directorate of the Community Central Authority (ACC) is responsible for maintaining, in addition to its own archives, those of all the adoption agencies that lose their license and the files held by any person or public authority (with the exception of the municipalities and courts) involved in an adoption as a third party. A letter was therefore sent to all the public social welfare centres, family planning centres and hospitals with a maternity ward, as well as to any person and association (of which ACC is aware) that was previously involved in an adoption as a non-licensed intermediary. Failure to comply with the obligation to transmit the archives is punishable by law.

33. Since the reform decree of 2014, the non-identifying information about a child's origins is entered into a form that is given to the adoptive parents when they meet the child. This information allows a child to know part of his or her history, including some details about his or her parents of origin (for example, age, physical characteristics and level of education), but not their names.

34. Access to this non-identifying information is granted to the adopted child and his or her legal guardian, together with additional support, if needed. If the child is less than 12 years old, he or she must be accompanied by a parent or guardian. If the child is less than 18 years old, he or she must receive professional guidance. If the child is over 18 years old, professional guidance must be offered, but may be declined.

(b) Origin searches

35. When contacted regarding an origin search, ACC determines if it has a file, if the file is maintained by another adoption facility, or if there is no trace of a file. If a file exists, the requester (if a legal adult) has access to it; professional guidance is offered (by ACC, by an adoption agency or by a centre specializing in such guidance); the requester may consult the records contained in the file and he or she may obtain copies (delivered in person); and assistance may be provided to set up a meeting with the family of origin, in Belgium or abroad. If the file is not with ACC or other adoption facilities, the requester is given assistance either with finding other options, or with establishing the history of his or her origins.

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36. Below are some statistics for 2014 and 2015:

- Adoption agencies licensed for domestic adoptions processed 110 origin search requests, two thirds of which were submitted by adults, and the remaining one third by minors;
- Four of the six adoption agencies licensed for international adoptions processed 84 requests, with the same ratio of adults to minors;
- ACC also processed some 20 requests;
- The association L'Envol, specializing in post-adoption support, including origin searches, received 85 requests in 2014 (2015 data are not yet available, but there were likely 150 requests for 2014 and 2015). The issue of origins is always raised as part of these requests; however, it is not always the main focus of the request.

D. Recommendation contained in paragraph 30: registers of persons deprived of liberty

37. In 2014, during the consideration of its report before the Committee, Belgium underscored the priority given to the adoption of the royal decree on registers of persons deprived of liberty.

38. In seeking to make this a reality, the relevant institutions continued their work and finalized a draft that, in accordance with the usual procedure, will soon be submitted for official approval by the authorities.

39. While this has not yet led to the formal adoption of the royal decree, progress towards that objective is ongoing.

40. Belgium would like to once again underline the existence, in addition to these initiatives, of an established practice within the law enforcement services that was developed on the basis of internal, standing instructions and reflects the services' firm commitment to effect any deprivation of liberty in accordance with the international standards concerning the respect of human rights and specifically to that stipulated in article 17, paragraph 3, of the Convention. This practice, which fulfils the legal obligation of maintaining a register of persons deprived of liberty, also ensures a uniform set of data for all the services concerned, as can be seen from the internal documents used by the police which are attached to the present report and to which Belgium draws the Committee's attention.

41. Furthermore, the Belgian police carries out regular staff training and awareness workshops on the legal requirements for maintaining such a register.

42. Police units are inspected regularly, including by the Directorate for Inspection and Audit of the Inspectorate-General of the Federal and Local Police. To date, the individual investigations unit of the Inspectorate-General of the Federal and Local Police has registered no complaints with regard to the registers of persons deprived of liberty.